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March 13, 2002

William F. Caton
Acting Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,
CC Docket No. 96-45**

Dear Mr. Caton:

On behalf of the Palau National Communications Corp. ("PNCC"), Larry Goddard, Counsel to the President of Palau; Carlos Salii, member of the PNCC Board of Directors; Ed Carter, General Manager of PNCC; and I met yesterday afternoon with Kyle D. Dixon, legal advisor to Chairman Michael K. Powell, to discuss the Petition of PNCC filed on November 16, 2001. I am attaching the handout we used, which summarizes the presentation.

If you have any questions, please contact me.

Respectfully submitted,

David L. Sieradzki
Counsel for the Palau National
Communications Corp.

Enclosures

cc: Kyle D. Dixon



Palau National Communications Corporation

Petition Regarding Universal Service and NECA Membership

March 2002



The Republic of Palau's Unique Relationship With the U.S.

- Palau, with a population of about 19,500, was part of the U.S. Trust Territory of the Pacific from World War II until 1994. Since 1994, Palau has been independent but continues to be closely linked to the U.S. under a Compact of Free Association.
- The Compact, enacted into U.S. law by Congress in 1986 and ratified by Palau in 1993, commits the U.S. to promoting Palau's economic development.
- The Compact provides for Palau to be treated as if it continued to be part of the U.S. for purposes of certain programs:
 - The U.S. military has exclusive responsibility for and access to Palau, and Palauans serve in the U.S. armed forces.
 - The U.S. dollar is the currency of Palau, and the U.S. Postal Service delivers the mail in Palau (postal abbreviation "PW", ZIP code 96940).
 - Palau is treated as a domestic jurisdiction for purposes of programs administered by the U.S. Departments of Agriculture, Commerce, Education, HHS, Interior, Justice, Labor, Transportation, Veterans Affairs, and the EPA.
 - The U.S. has made investments in Palau's infrastructure, including roads, airport and seaport facilities, and communications networks.



Telecommunications in Palau

- PNCC, the government-owned carrier, provides local and long-distance services to fewer than 10,000 customers.
- In 1993, the USDA's Rural Utilities Service granted PNCC a \$39.1 million loan to rebuild and modernize Palau's telecommunications infrastructure. PNCC used the RUS loan funds to deploy a modern telecommunications system.
- PNCC, however, faces a financial crisis, due in large part to FCC policies:
 - Reduction of payments from international carriers due to "Benchmark" accounting rate policy;
 - Revenue losses due to international call-back, refile, and other competitive developments;
 - Substantial difficulties with call completion and service quality on in-bound calls.
- The Compact provides for including Palau in the U.S. telecommunications regulatory system.



Palau's Participation in the Universal Service Program Would Serve the Public Interest

- The United States has a **vital strategic interest** in Palau, particularly given Palau's proximity to some East Asian and Pacific countries that could be among the most critical hot spots in the worldwide war on terrorism.
- PNCC faces a **financial crisis** that was largely brought about by FCC policies. The United States has a responsibility to provide explicit universal service support for PNCC's operations as an alternative to the implicit subsidies that are being eliminated.
- The **Compact of Free Association**, which defines the relationship between the United States and Palau, expresses the United States' commitment to advancing the economic development of Palau, including critical infrastructure such as telecommunications networks.



PNCC's Petition Requests Three Findings:

- 1) The **FCC has jurisdiction** over PNCC.
- 2) Under **Section 254** of the Communications Act, the FCC should include PNCC in the high-cost universal service program.
- 3) The FCC should **waive the "ILEC" definitions** in certain rules in order to allow PNCC to participate in NECA and in the high-cost universal service support program.



1) The FCC Has Jurisdiction Over PNCC

The language of the Compact plainly extends the FCC's jurisdiction.

“Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers.”
Senate Rept. No. 99-403, P.L. 99-658, at 38.

The Palau Compact specifically directs the FCC to exercise its Communications Act authority over any carrier that:

- a) is a United States common carrier;
- b) provides domestic and international communications services in Palau; and
- c) does so using satellite earth stations that it owns and that are located in Palau.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- ✓ **a) is a United States common carrier;**
 - PNCC will be a United States common carrier upon grant of the international Section 214 authority requested in the petition, for which it is indisputably qualified.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- ✓ a) is a United States common carrier;
- ✓ b) **provides domestic and international communications services in Palau;**
 - PNCC clearly provides domestic and international communications services to customers in Palau.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- ✓ a) is a United States common carrier;
- ✓ b) provides domestic and international communications services in Palau; and
- ✓ c) **does so using satellite earth stations that it owns and that are located in Palau.**
 - All communications in Palau are interconnected with the U.S. and international public switched networks via the one satellite earth station in Palau, which PNCC owns.
 - “The FCC shall have jurisdiction over Palau’s domestic services when and if a ‘United States common carrier’ ever furnishes such services by means of satellite earth stations.” AT&T at 4.
 - Regardless of whether the FCC has authority to regulate PNCC’s domestic (or “intrastate”) service in Palau, the FCC has authority to provide federal universal service funding for it, just as it does for other U.S. carriers’ intrastate service.



2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program

- a) For purposes of telecom regulation, the Compact treats Palau as if it were part of the United States (“the Nation”).
- b) The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.
- c) The circumstances of Palau are unique. Making these findings with respect to Palau would not compel the FCC to extend the universal service or NECA programs any further. Other Freely Associated States are subject to a separate Compact.



2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program

- a) **For purposes of telecom regulation, the Compact treats Palau as if it were part of the United States (“the Nation”).**
- b) **The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.**
 - To give meaning to Section 131 of the Palau Compact, “the Nation” should be interpreted to cover all areas under FCC jurisdiction.
 - U.S. law treats Palau as part of the United States for a number of federal programs - including telecommunication regulation.
 - In any event, the FCC retains discretion to strike a “balance” among the principles in Section 254(b); those “lofty and expansive” principles “hardly constitute[] a series of specific statutory commands.” *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).



2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program

- a) Section 254 should be read together with the Palau Compact.
- b) The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.
- c) **The circumstances of Palau are unique. Making these findings with respect to Palau would not compel the FCC to extend the universal service or NECA programs any further. Other Freely Associated States are subject to a separate Compact.**
 - GVNW estimates an annual cost not likely to exceed \$6.5 million.



3) The FCC Should Waive the “ILEC” Definitions in Certain Rules

- The Commission’s rules assume that all ILECs participated in NECA in the past. There can be no dispute that PNCC is the ILEC in Palau.
- The FCC has granted very similar waivers for American Samoa Telecom, Guam Telephone Authority, the Offshore Telephone Company, Sandwich Isles Communications, and South Park Telephone Company.
- The only distinction for PNCC is that it is a Freely Associated State. Once the FCC finds that it has jurisdiction over PNCC, there is no distinction between PNCC and those carriers.